

# Labor News & Views

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**Human Resources Service Center, Northwest**  
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**An employee and labor relations publication for Naval activities  
served by the Human Resources Service Center - Northwest**

## **NEW, IMPROVED HUMAN RESOURCE WEB SITE COMING SOON!**

Our customers asked for it, and so they'll get it!

By the next issue of this newsletter we'll be able to direct you to the remodeled Human Resource (HR) web site that will be rich in data our NW customers frequently ask about.

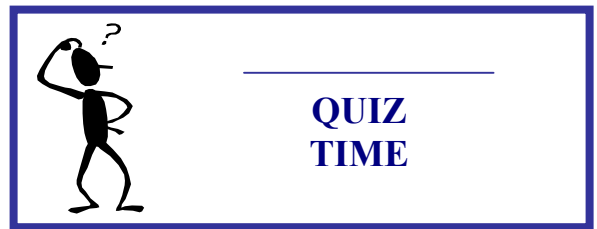
The new site is provided to you by your Human Resources Office. It will include a wealth of information on job vacancies, employee benefits, pay scales, and available training courses, as well as who to contact for more specialized help. We'll even include some links to other great HR web sites.

The Navy-wide web site remains available to you at [www.donhr.navy.mil](http://www.donhr.navy.mil).

Be watching for it around January 2001.

### **INSIDE THIS ISSUE**

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You're sitting in your office one day when the door suddenly flies open. In walks your employee, Fred, eyes bulging, and his face as red as a beet.

When your greeting, "Hi, Fred. Nice Day, huh?" is returned by a phrase unprintable in this publication but negatively reflects upon your family tree, you quickly surmise Fred is not there to talk about the weather.

You try again. "Hi, Fred. Something on your mind?" "I hate this job! I hate this place! I hate you," Fred responds, "I want to file a grievance!"

What do you do now?

1. Send Fred to see the Chaplain?
2. Send Fred to the HRO?
3. Invite Fred to sit down and tell you about his concerns?
4. Send Fred to a union steward?
5. Send Fred to the EEO Office?
6. Return Fred's curses in kind?

(See "Grievance" on page 3)

## FITNESS FOR DUTY EXAMS

Situations in which an agency needs medical information in order to address an employee relations problem can be complicated. Sometimes employees may develop medical problems that impact their ability to do their job, or they may appear to have such problems. A typical reaction by management to this situation is to want to send the employee to a doctor for an examination. "Send 'em for a 'fitness for duty' examination" is a common response to this situation. In reality, though, the circumstances in which an agency can *require* an employee to go for a doctor's examination are rather limited.

The rules on this situation are found in 5 CFR Part 339. In particular, 5 CFR 339.301 provides that an employee may be required to get a medical examination if his or her position has medical standards or physical requirements. This is most often true for Wage Grade (WG) positions, which may have specific requirements spelled out in the job description, such as the ability to lift objects of a certain weight, or the ability to climb, crawl, stand for long periods, and so forth. Some General Schedule (GS) positions may also have formal physical requirements, although that is more rare on the GS side. If a position does have specific medical or physical requirements, and management has a direct question about the employee's continued capacity to meet those requirements, a "fitness for duty" examination may be required.

However, many times when this question comes up, the employee's job does not have specific medical or physical requirements. If the job does not have such requirements, can a medical examination be required? In most cases, the answer is no. The most the agency can do usually is *offer* a medical examination.

This can be done when the employee is requesting a change in duty status, assignment, working conditions, or other benefits or special treatment for medical reasons, or when the employee has performance or conduct problems that may require agency action (and the agency thinks there may be a medical reason contributing to the problem).

When this occurs, the agency designates the examining physician (normally the branch clinic), although the employee must be allowed the opportunity to provide medical documentation from his/her own doctor, and such documentation must be considered by the agency. As the word "offer" implies, an employee in this scenario may decline to get the medical examination and share any medical information with the agency. However, if the employee declines an offered medical examination, the agency's ability to accommodate any medical condition the employee may have is hampered. Good documentation of the offer of the medical examination, the reasons it was offered, and the employee's response to the offer must be kept.

Another thing to keep in mind is that if an employee has a disabling condition, the agency may be obligated to reasonably accommodate the disability. That situation will be more difficult if the employee resists an agency offer for a medical examination, but the agency's obligation to accommodate the disability still cannot be ignored. If you have a situation like this, be sure to seek advice on how to handle it from the Human Resources Office.

Other special situations where a fitness for duty examination is allowed include examinations resulting from an on-the job injury, situations when an employee is being RIFed into a position with different medical or physical requirements, and situations in which an agency can order a psychiatric examination (*Warning:* These ones are tricky and you'll need your HR professional's advice).

**Got Ideas?** You can contact us at [nwlabor\\_nw@nw.hroc.navy.mil](mailto:nwlabor_nw@nw.hroc.navy.mil). We would enjoy hearing your ideas for our newsletter.



## Table of Contents

Our Calendar Year 2000 Table of Contents is included with this month's distribution. We hope it provides you easy reference to the articles published this year.

## GRIEVANCE RESOLUTION

### WHOSE JOB IS IT?

Whose job is it to resolve Fred's grievance? Primarily, it's your job as Fred's immediate supervisor. That's one of the tasks (unpleasant though it may sometimes be) for which you're being paid supervisors' wages.

Your collective bargaining agreement provides (with some exceptions) that employee grievances shall be presented to the immediate supervisor at the first step of the grievance procedure. If you, upon hearing that Fred wants to file a grievance, shuffle Fred off to see someone else, you've just violated the agreement.

There are other reasons besides the contract violation that it makes sense for you to attempt to resolve the grievance. For example, put yourself in Fred's shoes. What if you had a concern about something around the office and when you approached the boss to try to work something out, he said, "Go see the Chaplain." How would you feel? You probably wouldn't feel 'warm and fuzzy' about your boss or his treatment of you.

### Is This in My Job Description



Experience indicates the best opportunity to resolve an employee's concern to everyone's satisfaction is at the first step of the grievance procedure. Why is that?

For one thing, the longer it takes to address the employee's concern, the more time the employee has to fret over the concern. And the longer he has to fret, the madder he gets. And the madder he gets, in all probability the greater the remedy he'll seek to resolve the matter. Now, not only is he mad about his original concern, but he's mad because his boss ignored those concerns.

Secondly, the higher in the grievance procedure one goes, the more formal becomes the process.

There are more players' involved, i.e. higher supervisors, union stewards, and maybe even some Human Resource Specialists. The process also seems to take on a life of its own. And the more players that are involved, the more difficult it becomes to find a remedy which will satisfy all.

When you fail to find a remedy to resolve the employee's concern, you put your boss into a "no win" situation at the next step of the grievance procedure. If he supports your 'grievance denied' position, the employee's upset. If he supports the employee's position, you're upset.

This is not to suggest that you're always going to be able to find a remedy for every employee's concern. This is to suggest however, that it's appropriate that you make an honest and sincere effort to understand the concern and see if there's not some reasonable way of resolving it.

Accordingly, answer 3 in today's quiz is the most appropriate answer. If you're in the middle of something pressing at the time, set a time in the next day or two to get together with Fred to address his concerns. Sometimes a "cooling off" period will help him look at the situation more clearly. Don't simply shuffle him off to someone else.

If you shuffle him off to HRO, they'll probably do one of two things:

1. Send him BACK to see you in accordance with the collective bargaining agreement, if appropriate. You can count on him feeling like he's getting the runaround which will not make your job any easier; or,
2. Send him to see his union steward. Get ready because now BOTH the union steward and the employee will be headed back your way and you will be dealing with them, which may not make your job any easier.

There are a number of resources available to assist you in the process, including a call to your HR Specialist, the EEO Office, the Civilian Employee Assistance Program, and in some cases maybe even the Chaplain's office. But their role is one of assisting you. You have the primary role in dealing with these issues in the workplace.

The sooner those issues get resolved, the sooner your employee returns to work. The more productive he becomes, the more productive your workgroup becomes. Who knows, that might even result in a performance award for you!



**HAPPY HOLIDAYS**  
From all of us at  
**HRSC-NW**

## UNAUTHORIZED USE OF GOVERNMENT VEHICLES

*"Mandatory means Mandatory," says MSPB*

When the Department of Justice suspended the employee for 30 days for unauthorized use of a government vehicle, the employee sought relief to the Merit Systems Protection Board. Prior to the Administrative Judge holding a hearing on the employee's appeal, Justice unilaterally mitigated the penalty of a 14-day suspension. By so doing, Justice theorized it would remove the appeal from MSPB's jurisdiction<sup>1</sup>. The judge agreed with Justice's theory and dismissed the appeal.

The employee, not realizing when he was well off, appealed the judge's dismissal to the full Board. He argued that since MSPB had jurisdiction at the time of his initial appeal, Justice could not unilaterally negate that jurisdiction by anything less than a complete cancellation of the disciplinary action. You'd think that was a nice argument, right? Well, the Board agreed too and remanded the case back to the judge for a hearing.

At hearing, Justice placed sufficient evidence before the judge to convince him of the employee's wrongdoing. The judge sustained the charge of "Unauthorized use of a Government Vehicle." The judge further found that the employee's actions were "willful," in that the employee knew at the time his use of the vehicle was not for an authorized purpose. But the judge didn't stop there. The judge noted that 31 US Code 1349(b) provides that, "... an officer or employee who willfully uses or authorizes the use

of a passenger vehicle ... owned or leased by the United States Government (except for an official purpose authorized by section 1344) shall be suspended without pay by the head of the agency. The officer or employee shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office." So the judge ordered the agency to reinstate the original 30-day suspension.

In a similar case, the Federal Circuit Court defined the term "willful" as used in the statute to mean "voluntarily and consciously ... with knowledge of, or reckless disregard for, whether the intended use was for other than official purposes."

Lesser penalties may be imposed appropriately if an unauthorized use of government vehicles occurs, but the employee's actions were not willful. However, if the action is willful, the law requires a *minimum* 30-day suspension.

## TRAINING OPPORTUNITIES

Date	Class	Location
5-8 Dec	Intro to Supervision	HRSC
11-14 Dec	Intro to Supervision	Everett
14 Dec	Dealing with anger in the workplace	HRSC
16 Jan 01	Ten steps to effective meetings	HRSC
17 Jan	Violence in the workplace	HRSC
22 Jan	Myers-Briggs type indicator	HRSC

If interested, contact Code 30 at HRSC at 315-8143  
A complete list of training offered by HRSC can be found at [www.donhr.navy.mil/Training/index.htm](http://www.donhr.navy.mil/Training/index.htm)

THIS NEWSLETTER IS INTENDED TO PROVIDE GENERAL INFORMATION ABOUT THE MATTERS DISCUSSED. THEY ARE NOT LEGAL ADVICE OR LEGAL OPINIONS ON ANY SPECIFIC MATTERS. FOR FURTHER INFORMATION REFER TO YOUR HUMAN RESOURCES ADVISOR.

<sup>1</sup> Remember, MSPB has jurisdictions for actions more than 14 days.